

United States Department of Agriculture

Natural Resources Conservation Service

Utah State Office

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CONFIDENTIAL

November 18, 2013

Ms. Dana Dean Associate Director- Mining Utah Division of Oil, Gas, and Mining 1594 West North Temple Suite 1210 Salt Lake City, Utah 84114 RECEIVED NOV 2 7 2013

DIV. OF OIL, GAS & MINING

Reference: Cultural Resources Inventory of the Kane County Emergency Watershed Protection (EWP) Project Rock Quarry Location on Kanab Creek, Kane County, Utah (U-13-SH-1067p)

Dear Ms. Dean:

Enclosed is a signed copy of the Memorandum of Agreement (MOA) and an accompanying treatment plan for the resolution of adverse effects to Site 42KA7537 in Kane County. Copies of the enclosed documents have also been sent to the other consulting parties.

If you have any questions, comments, or concerns, please contact Andrew M. Williamson, State Cultural Resources Specialist, at (801) 524-4556 at your earliest possible convenience.

Sincerely,

DAVID C. BROWN State Conservationist

Enclosure

cc: (w/o encl)

Andrew M. Williamson, Cultural Resources Spec, NRCS, Salt Lake City, Utah

MEMORANDUM OF AGREEMENT

AMONG THE NATURAL RESOURCES CONSERVATION SERVICE,

THE KANE COUNTY COMMISSION,

MR. MERLIN ESPLIN,

THE UTAH DIVISION OF OIL, GAS, AND MINING,

AND THE UTAH STATE HISTORIC PRESERVATION OFFICER

REGARDING MITIGATION OF ADVERSE EFFECTS TO SITE 42KA7537

AS PART OF THE KANE COUNTY EMERGENCY WATERSHED PROTECTION PROJECT KANE COUNTY, UTAH

(NRCS AGREEMENT No. 68-8D43-14-02)

WHEREAS the Natural Resources Conservation Service (NRCS) is providing technical and financial assistance to the Kane County Commission for the repair of infrastructure along the East Fork of the Virgin River and the development of a rock quarry for such repairs; and

WHEREAS, the NRCS has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS the NRCS has defined the Project's area of potential effects (APE), as defined at 36 C.F.R. 800.16(d), as a 6.45 acre area on private land owned by Mr. Merlin Esplin.

WHEREAS the NRCS has determined that the Project had an inadvertent adverse effect on Site 42KA7537 as described in the report entitled "Cultural Resources Inventory of the Kane County Emergency Watershed Protection (EWP) Project Rock Quarry Location on Kanab Creek, Kane County, Utah," prepared by the NRCS and dated April 15, 2013, which NRCS and the Utah SHPO have agreed meets the criteria for inclusion in the National Register of Historic Places, and possibly on archeological resources lying beneath the modern ground surface; and

WHEREAS the NRCS has consulted with the Utah SHPO; Mr. Louis Pratt (on behalf of the Kane County Commission); Mr. Merlin Esplin; the Utah Division of Oil, Gas, and Mining (UDOGM); the Paiute Indian Tribe of Utah; the Navajo Nation; the Kaibab Band of Paiute Indians; the Moapa Band of Paiute Indians; and the Las Vegas Tribe of Paiute Indians; to resolve the Project's adverse effects on historic properties; and

WHEREAS the Paiute Indian Tribe of Utah, the Navajo Nation, the Kaibab Band of Paiute Indians, the Moapa Band of Paiute Indians, and the Las Vegas Tribe of Paiute Indians have declined further participation in the development of this Memorandum of Agreement (MOA); and

WHEREAS the NRCS has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect to Site 42KA7537 and invited the Council's participation in the project, pursuant to 36 CFR 800.6(a)(1), in a letter dated September 5, 2013; and

WHEREAS the ACHP declined to participate in consultation; and

WHEREAS, pursuant to 36 CFR 800.6(c)(2), the NRCS has invited Mr. Merlin Esplin, Mr. Louis Pratt, and UDOGM to sign this MOA; and

WHEREAS, Mr. Merlin Esplin, Mr. Louis Pratt, and UDOGM have agreed to sign this MOA; and

WHEREAS, other parties may be invited to become signatories to this Agreement if such a party agrees to these terms; and

NOW, THEREFORE, the NRCS, the Utah SHPO, Mr. Merlin Esplin, Mr. Louis Pratt, and UDOGM agree that upon the decision of the NRCS to complete the Project, the Parties shall ensure that the following stipulations are implemented in order to resolve the adverse effects to historic properties as a result of the Project, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The NRCS shall ensure that the following stipulations are implemented:

I. PROFESSIONAL QUALIFICATIONS

- A. All tasks will be completed by NRCS personnel meeting the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* as stated in 36 CFR Part 61.
- **B.** All tasks will be completed according to specifications consistent with the Secretary of Interior's *Standards and Guidelines for Archaeological Documentation and Historical Documentation* and, where appropriate, requirements by the Utah SHPO.

II. MITIGATION OF ARCHAEOLOGICAL RESOURCES

A. The Kane County Commission will obtain the use of a contractor to reclaim the disturbed portions of site 42KA7537 according to the methods outlined in the Treatment Plan contained in Appendix A, made a part

hereof by this reference. The reclamation costs incurred by Kane County for implementing the provisions of the treatment plan can be considered allowable costs that are eligible as cost share or reimbursement from the NRCS under the terms of the EWP Agreement (Agreement No. 68-8D43-12-05) between Kane County and the NRCS.

- B. The NRCS will complete additional surface recordation of artifacts and cultural features within the boundaries of Site 42KA7537 according to methods outlined in the Treatment Plan contained in Appendix A.
- C. Mr. Merlin Esplin will permit access to his property for the purposes of implementing the mitigation procedures outlined in the Treatment Plan contained in Appendix A.
- **D.** UDOGM will ensure that the rock quarry is reclaimed according to stipulations outlined in Utah Administrative Code R647-3.

III. ARCHAEOLOGICAL MONITORING AND REPORTING

- A. The NRCS will conduct archaeological monitoring of construction activities within the boundaries of Site 42KA7537. The construction monitoring will be carried out following the protocols established in the Treatment Plan contained in Appendix A.
- B. Upon completion by the NRCS of the fieldwork and post-field analysis, a summary report will be prepared by the NRCS and submitted to the Consulting Parties. In addition, a revised Intermountain Antiquities Computer System (IMACS) archaeological site form for Site 42KA7537 will be prepared and submitted with the report. NRCS will complete this report within 30 days following the completion of monitoring.

IV. UNANTICIPATED ARCHAEOLOGICAL DISCOVERIES

In the event of an unanticipated archaeological discovery during the subsurface testing or during construction, NRCS will document and/or treat the discovery based on the criteria and methods described in the Treatment Plan. If significant discoveries requiring longer-term work stoppage for consultation and mitigation are encountered, the NRCS will consult per 36 CFR Part 800.6 to develop a Phase II data recovery (mitigation) plan to further mitigate adverse effects.

If human remains are discovered under any circumstances, the NRCS will consult to develop an appropriate mitigation plan that meets all the requirements of NAGPRA and Utah Code 9-8-309 for inadvertent discoveries. After approval of the plan, mitigation will proceed. Construction in the area of the remains may need to be halted throughout the review process. Continuation of work following a discovery will be contingent upon approval by the NRCS Area Cultural Resources Specialist (CRS) in consultation with the Utah SHPO and other consulting parties.

V. DISPUTE RESOLUTION

Should the NRCS or any of the signatories to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, NRCS shall initiate consultation with the signatories to resolve the objection. If NRCS determines that such objection cannot be resolved, NRCS will:

- A. Forward all documentation relevant to the dispute, including the NRCS's proposed resolution, to the ACHP. The ACHP shall provide NRCS with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRCS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. NRCS will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the NRCS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NRCS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. It will be the responsibility of the NRCS to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VI. COORDINATION WITH OTHER ACTIONS

Other state or federal agencies that provide permitting or financial assistance to an undertaking covered by this Agreement may satisfy their own cultural resources compliance responsibilities by accepting and complying with the terms of this MOA. Other parties may have their actions covered by this agreement if they agree to the terms of this Agreement. Agencies shall notify the NRCS and the Utah SHPO in writing of its intent to adhere to this Agreement.

IV. TERMINATION

- A. If the terms of this MOA have not been implemented by December 31, 2014, then this MOA shall be considered null and void. In such an event, the NRCS shall so notify the Parties to this MOA and, if it chooses to continue with the Project, then it shall reinitiate review of and consultation on the Project in accordance with 36 C.F.R. 800.3 through 800.7.
- B. In the event that the NRCS does not carry out the terms of this MOA, the signatories shall consult to seek amendment to the MOA and proceed in accordance with 36 CFR Part 800(c)(8).
- C. Any signatory to the MOA may terminate the Agreement by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek Agreement on amendments or other actions that would avoid termination. In the event of termination, the NRCS shall proceed in accordance with 35 CPR Part 800(c)(8), execute a new agreement in accordance with 800(c)(1) or request comments of the Council under 800.7(a).

Execution of this MOA by the NRCS, the Utah SHPO, Mr. Louis Pratt, Mr. Merlin Esplin, and UDOGM, and its submission to the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the Council for the purposes of Section 110(l) of NHPA. Execution and submission of this MOA, and implementation of its terms evidence that the NRCS has afforded the Council an opportunity to comment on the Undertaking and its effects on historic properties, and that the NRCS has taken into account the effects of the Undertaking on historic properties.

SIGNATORIES:

NATURAL RESOURCES CONSERVATION SERVICE

Date: 11/4/2013

Date: 11/4/2013

UTAH STATE HISTORIC PRESERVATION OFFICER

Brad Westwood Utah State Historic Preservation Officer

INVITED SIGNATORIES:

MERLIN ESPLIN

LOUIS PRATT

Louis Pratt, Kane County Transportation/GIS Coordinator

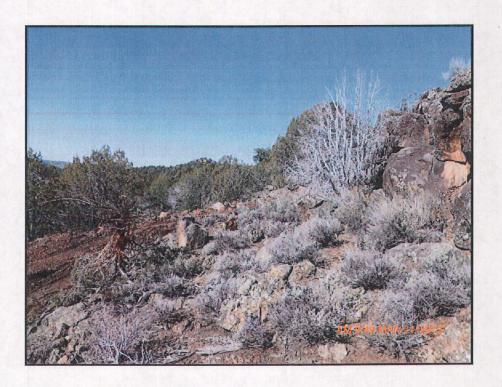
Memorandum of Agreement (No. 68-8D43-14-02) for the Kane County EWP Project, Kane County, Utah Page 7

DANA DEAN

Dana Dean, Associate Director-Mining, Utah Division of Oil, Gas, and Mining



Treatment Plan for Site 42KA7537, Kane County, Utah



Prepared By

Tara S. Hoffmann, Area Cultural Resources Specialist Natural Resources Conservation Service

October, 2013

State of Utah Public Lands Policy Coordination Office Archaeological Survey Permit No. 54 Utah State Antiquities Project No. U-13-SH-0167p

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I. INTRODUCTION

In the spring of 2011, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), was requested to provide technical and financial assistance to the Kane County, Utah Commission to protect and repair public infrastructure at 10 work locations on the East Fork of the Virgin River near the communities of Glendale, Orderville, and Mount Carmel, Utah. Rock for the project would be sourced from a proposed location on Kanab Creek. The focus of the current project is an unanticipated adverse effect to a prehistoric cave site discovered during development of the rock quarry location. Under the original proposed plan, rock for stabilizing the eroded streambanks would be sourced from an area on the Glendale Bench on the west margin of Kanab Creek. This location was inventoried for cultural resources by NRCS State Cultural Resources Specialist (CRS) Andrew M. Williamson in March 2012 (Williamson 2012).

When quarrying began in March 2013, it was discovered that the quarry was not located in the area that was inventoried by the NRCS in 2012. Instead, the quarry was located approximately 160 meters to the southwest in an area that had not previously been inventoried for cultural resources (Figure 1). An inspection of the unauthorized rock quarry was completed by NRCS Area CRS Tara S. Hoffmann and Lee Woolsey of the NRCS on March 13, 2013 under authority of PLPCO Permit No. 54 (Andrew M. Williamson, RPA) and Utah State Antiquities Project No. U-13-SH-0167p (Hoffmann 2013). This resulted in the identification of a prehistoric cave site (42KA7537), which the NRCS determined was eligible for the National Register of Historic Places (NRHP).

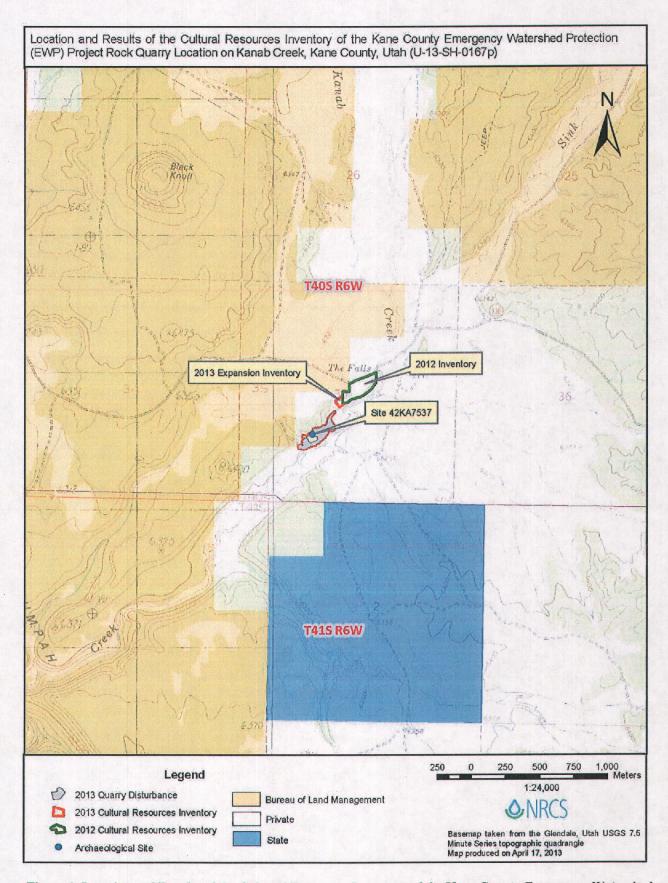


Figure 1. Location and Results of the Cultural Resources Inventory of the Kane County Emergency Watershed Protection (EWP) Project Rock Quarry Location on Kanab Creek, Kane County, Utah.

SITE 42KA 7537

Site 42KA7537 is a Late Archaic to Late Pueblo II cave site with associated artifact scatter located at the base of a basalt outcropping along a ridge overlooking Kanab Creek to the south (Figure 2). The cave measures approximately 4.1 meters deep, 3.7 meters wide at the mouth, and varies between 1.1 and 1.4 meters high. An artifact scatter extends downslope from the mouth of the cave, and extends both east and west along the basalt outcropping (Figure 3).

The scatter includes ceramic fragments, lithic debris, three projectile points, a late-stage-biface, a possible drill, and a loose scatter of fire-cracked rock. Lithic materials are dominated by cherts with two obsidian flakes, as well as some quartzite flakes. Ceramics include North Creek Gray (plain and corrugated) and one black-on-white sherd. Fire-cracked rock is present throughout the site with a greater concentration within five meters of the mouth of the cave. The site likely represents seasonal use of the area for resource procurement. A medium-sized juniper tree is growing directly outside the cave entrance, obscuring the cave when viewed from below (Hoffmann 2013).

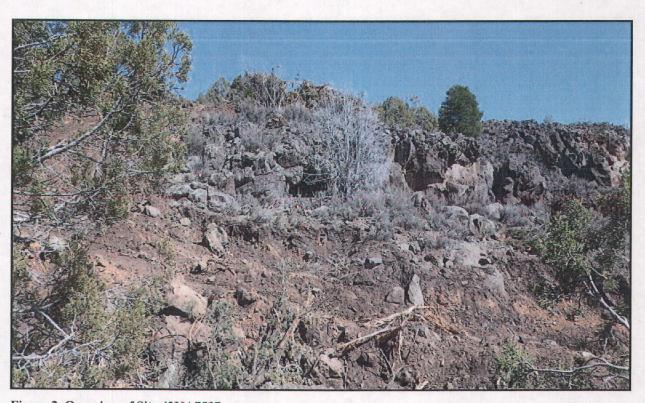


Figure 2. Overview of Site 42KA7537.

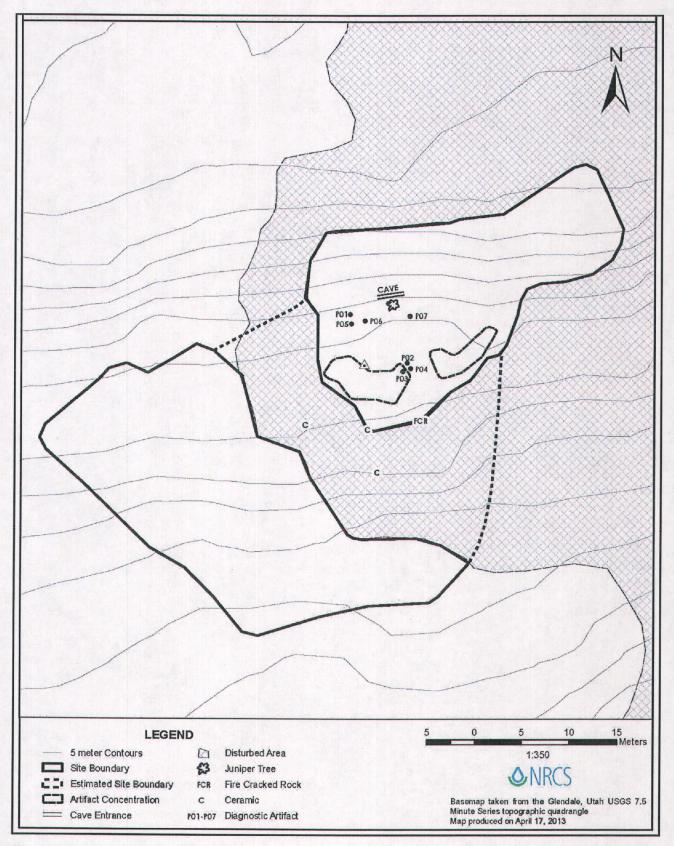


Figure 3. Sketch Map of Site 42KA7537.

Site 42KA7537 has been determined eligible for the NRHP. Despite the destruction of portions of the site from recent quarrying operations, the main portion of the site remains intact and retains sufficient integrity for evaluation for the NRHP. A review of the materials identified during recordation indicates that the site has potential to provide information on Late Archaic lifeways along Kanab Creek and in Southern Utah. It is estimated that there is approximately 60 cm of fill inside the cave. As such, there is potential within the cave for intact subsurface deposits that could be studied and analyzed to provide information on seasonal cave occupations and resource use during the Late Archaic through late Pueblo II. The artifact concentration at the mouth of the cave includes ceramic fragments and fire-cracked rock, the latter of which may yield additional data such as radiocarbon samples to further refine the time and extent of site use.

Determination of Adverse Effects to Site 42KA7537

Site 42KA7537 was adversely affected as a result of the unauthorized quarry. Specifically, a road was cut along the slope on which the site is located to gain access to the top for drilling (Figure 3). The construction of the road resulted in a two to three meter high cut bank on the south and west sides of the site. Artifacts were noted within the cut bank and on the opposite bank of the road. Cultural deposits extend approximately 10cm deep based on the road cut profile. Artifacts were also noted on the south and west sides of the road, suggesting the site continued west along the basalt ridge and the artifact scatter continued down slope. Based on field observations, the more prominent features of the site, including the cave and diagnostic artifacts remained undamaged.

Approximately 25% (365 square meters) of the site was destroyed as a result of rock quarrying activities in the site's immediate surroundings. It is believed that the main portion of the site, including the cave and the associated artifact concentration immediately outside the mouth of the cave, remain intact and undisturbed. Those portions of the site that were destroyed were likely areas where artifacts were transported as a result of sheetwash erosion and site deflation.

In accordance with 36 CFR Part 800.6, the NRCS provided copies of the cultural resources inventory report and archaeological site documentation to the Utah State Historic Preservation Office (SHPO), the landowner Mr. Merlin Esplin, Mr. Louis Pratt (on behalf of the Kane County Commission), the Paiute Indian Tribe of Utah, the Navajo Nation, the Kaibab Band of Paiute Indians, the Moapa Band of Paiute Indians, and the Las Vegas Tribe of Paiute Indians on April 26, 2013. The Utah Division of Oil, Gas, and Mining (UDOGM) was provided with documentation on October 15, 2013. This information disclosed the adverse effect to Site 42KA7537 and sought concurrence on the determination of eligibility for the archaeological site as well as for project effects. The Utah SHPO concurred with the determination of project effects on May 2, 2013, in a formal letter. On September 5, 2013, a summary letter of the project was submitted to the Advisory Council for Historic Preservation (ACHP), formally inviting the ACHP declined further participation in the consultation process to resolve adverse effects, requiring instead the filing of a final Memorandum of Agreement (MOA) developed in consultation with the Utah SHPO and other participants in the consultation process.

II. WORK PLAN

MITIGATION APPROACH

Because Site 42KA7537 has been determined eligible for the NRHP under Criterion D for its potential to yield information important in prehistory or history, the mitigation strategy will focus on the stabilization and reclamation of the slope surrounding the site and the road that was cut through the site during mining operations. Further impacts to the site from archaeological excavation are likely unwarranted and unnecessary. Given this, mitigation efforts at Site 42KA7537 will focus on six main areas:

- Additional documentation of Site 42KA7537 will be completed by NRCS CRS prior to reclamation of the quarry within the site boundaries. Documentation will at a minimum include profile mapping of representational sections of midden deposits, photographing exposed artifacts in situ, and an analysis of surface artifacts. Photographic documentation will also include reclamation activities and the road cut profile.
- Apply geotextile fabric barrier along the vertical cut bank through the site to reduce erosion of cultural deposits and create a barrier between *in situ* and disturbed deposits. Contour slope around site to less than a 45 degree angle, similar to the original contour, using existing disturbed materials. Large boulders removed from the road cut will be placed along the base of the cut bank, as needed, through Site 42KA7537 to reduce slumping and shifting of cultural deposits. Disturbed soil and overburden from within the road cut will be redistributed across the road cut to achieve a slope of 45 degrees or less. Waterbars will be constructed within the reclaimed road cut to reduce additional erosion;
- Minimize of construction impacts by confining activities to areas of existing disturbance
 to the maximum extent possible. Within the boundaries of Site 42KA7537, construction
 equipment will only be allowed in the existing disturbed area. This will reduce any
 potential impacts to Site 42KA7537 as a result of reclamation activities;
- Place large boulders along top of cut slope to prevent cattle from accessing top of rock outcrop;
- Monitor construction activities within 65 feet of archaeological site boundary to ensure existing deposits are not disturbed. Area outside of a 65-foot site buffer can be reclaimed without construction monitoring;
- Reseed disturbed areas with adaptable species excluding sage brush. The reseeding will
 return the quarry to a condition similar to original and stabilize the soil. Sagebrush will be
 excluded per the request of the landowner.

CONSTRUCTION MONITORING

During reclamation of the rock quarry within 65 feet of Site 42KA7537, the NRCS will monitor construction activities. During site monitoring, the NRCS Area CRS will examine the construction area to ensure no additional ground is disturbed and the intact portion of Site 42KA7537 is avoided. Photographs If necessary, the NRCS Area CRS will halt construction activities to further inspect the reclamation area in the event of a discovery. Photographs will be taken during reclamation activities within the site boundaries to document procedures.

III. UNANTICIPATED ARCHAEOLOGICAL DISCOVERIES

Because the most culturally sensitive areas of Site 42KA7537 will be avoided during construction activities, it is not anticipated that any cultural materials identified during construction will be considered significant discoveries requiring longer-term work stoppage for consultation and mitigation. However, in the event that such a discovery should occur, the NRCS will consult per 36 CFR Part 800.6 to develop a Phase II data recovery (mitigation) plan to further mitigate adverse effects.

Depending on what is identified, the cultural remains will be recorded or treated as a discovery based on the criteria listed below. Procedures for responding to cultural resources discovered during monitoring are also discussed below.

DISCOVERY DEFINITION

For the purposes, of this project, the criteria for determining significant discoveries will include, but are not limited to:

- Dense concentrations of prehistoric artifacts that appear to represent significant deposits or *in situ* artifact deposits rather than isolated artifacts.
- Dense concentrations of historical artifacts that appear to represent significant deposits or *in situ* artifact deposits rather than isolated artifacts.
- Prehistoric cultural features.
- Historical features considered to be significant.
- Any human bone.

The types of artifacts and features that will not be considered significant discoveries and will be considered non-significant cultural resources include:

- Recent debris from use of the property.
- Individual prehistoric artifacts or groups of small number of artifacts with no apparent potential for further discovery of artifacts or features.
- Individual historical artifact or groups of small numbers of artifacts with no apparent potential for further discovery of artifacts or features.
- Individual non-human bones or groups of small numbers of bones with no apparent potential for further discovery of artifacts or features.

DISCOVERY PROCEDURES

If resources are encountered that are not cultural or are cultural but not significant, the resources will be documented and the construction will be allowed to continue after documentation is complete. Documentation will consist of illustrations (where relevant), photographs, detailed descriptions, and recording of the location of the cultural material. If a significant cultural resource is identified, the following procedures will be implemented depending on whether the discovery consists of features and artifacts other than human remains or whether it consists of human remains.

For cultural resources not involving human remains, the NRCS will provide the Utah SHPO, the Kane County Commission, the land owner, UDOGM, and participating tribal governments with a proposed mitigation plan for review and comment. At the discretion of the NRCS Area CRS, construction may be allowed to continue in the area of the discovery while the mitigation plan is under review by consulting parties. Under all circumstances, continuation of work following a discovery will be contingent upon approval by the NRCS Area CRS in consultation with the Utah SHPO and other consulting parties.

If human remains are discovered under any circumstances, they will be secured and protected until such time as appropriate disposition has been determined in accordance with applicable local, state, and Federal statutes. Construction activities in the immediate vicinity of the discovery will cease immediately with in 15 m (50 ft) of their location. The NRCS will immediately notify the Kane County Sheriff's Department of the discovery, and will notify the Utah SHPO. The NRCS will consult to develop an appropriate mitigation plan that meets all the requirements of NAGPRA and Utah Code 9-8-309 for inadvertent discoveries. After approval of the plan, mitigation will proceed. Construction in the area of the remains may need to be halted throughout the review process. Continuation of work following a discovery will be contingent upon approval by the NRCS Area CRS in consultation with the Utah SHPO and other consulting parties.

IV. REPORTING

Upon completion of the mitigation fieldwork and post-field analysis, a report summarizing the results of construction monitoring will be prepared and submitted to the Utah SHPO, the Kane County Commission, the land owner, UDOGM, and the participating Tribal Governments. In addition, a revised Intermountain Antiquities Computer System (IMACS) archaeological site form for Site 42KA7537 will be prepared and submitted with the report. If the current phase of mitigation indicates that significant subsurface cultural deposits are present within the reclamation area, a Phase II data recovery plan to mitigate adverse effects to Site 42KA7537 will be prepared and submitted to the consulting parties for review.

REFERENCES

Hoffmann, Tara S.

2013 Cultural Resources Inventory of the Kane County Emergency Watershed Protection (EWP) Project Rock Quarry Location on Kanab Creek, Kane County, Utah. Utah Antiquities Project Number U-13-SH-0167p. Document on file at the Utah State Historic Preservation Office, Salt Lake City, and at the Natural Resources Conservation Service Utah State Office, Salt Lake City.

2013b Intermountain Antiquities Computer System (IMACS) Archaeological Site Form for Site 42KA7537. Document on file at the Utah State Historic Preservation Office, Salt Lake City.

Williamson, Andrew M.

2012 Cultural Resources Inventory for the Kane County Emergency Watershed Protection (EWP) Project, Kane County, Utah. Utah Antiquities Project No. U-12-SH-0189ps. Document on file at the Division of State History, Utah State Historic Preservation Office, Salt Lake City, Utah.